TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted] 39

PAUL WILLIAMS AND LORENA WILLIAMS, HUSBAND AND WIFE, PETITIONERS,

vs.

HUGH LEE, DOING BUSINESS AS GANADO TRADING POST.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

PETITION FOR CERTIORARI FILED FEBRUARY 26, 1958.
CERTIORARI GRANTED APRIL 14, 1958

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 811

PAUL WILLIAMS AND LORENA WILLIAMS, HUSBAND AND WIFE, PETITIONERS,

vs.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

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[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF APACHE

No. 2913

HUGH LEE dba GANADO TRADING POST, Plaintiff,

v.

PAUL WILLIAMS and LORENA WILLIAMS, his wife, Defendants.

AMENDED COMPLAINT—Filed November 25, 1952

Comes now the Plaintiff in the above entitled action and for his amended cause of action against the Defendants, alleges as follows:

I.

That Plaintiff owns and operates what is known as the Ganado Trading Post at Ganado, Apache County, Arizona; that the Defendants are likewise a resident of Ganado, Arizona.

[fol. 2]

II.

That between the 5th day of January, 1949, and the 3rd day of August, 1950, at the special instance and request of the Defendants, Plaintiff sold and delivered to them certain goods, wares and merchandise of the value of Three Hundred Sixty One and 22/100 ($361.22) Dollars.

III.

That demand has been made upon the Defendants for payment of the same, but that they have failed, neglected and refused to pay the same or any part thereof; that there is now due and owing this plaintiff from the Defendants, the sum of Three Hundred Sixty One and 22/100 ($361.22) Dollars, on account of the goods, wares and merchandise sold and delivered, as aforesaid.

Wherefore, Plaintiff prays judgment against the Defendants for the principal sum of Three Hundred Sixty One and 22/100 ($361.22) Dollars, and for his costs herein expended.

/s/ M. V. Gibbons, Attorney-at-law St. Johns, Arizona

[fol. 3]

IN SUPERIOR COURT OF APACHE COUNTY

BOND ON ATTACHMENT—Filed October 20, 1952

KNOW ALL MEN BY THESE PRESENTS: That we,

Hugh Lee, dba Ganado Trading Post

as Principal, and the UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland and authorized to transaction surety business in the State of Arizona, as Surety, acknowledge ourselves bound to pay to

the sum of Three Hundred Sixty-one and 22/100 Dollars ($361.22),

conditioned that the above bound Hugh Lee Plaintiff in attachment against the said Paul Williams and Lorena Williams Defendants, will prosecute said suit to effect and that he will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment.

IN TESTIMONY WHEREOF, the said Principal has subscribed his name and affixed his seal, and the said Surety has caused its name and seal to be hereunto affixed by its duly authorized Attorney-in-Fact, at Holbrook, Arizona, on the 15th day of October, A.D. 1952.

/s/ Hugh Lee (SEAL)

[fol. 4]

UNITED STATES FIDELITY AND GUARANTY COMPANY

By /s/ Robert A. Henning
Attorney-in-Fact (Seal)

Approved this 20 day of October, 1952.

/s/ J. Smith Gibbons
Judge

[fol. 5]

IN SUPERIOR COURT OF APACHE COUNTY

WRIT OF ATTACHMENT AND RETURN—Filed October 23, 1952

DEMAND, *$361.22*

THE STATE OF ARIZONA

TO THE SHERIFF OR ANY CONSTABLE OF *Apache* COUNTY, GREETINGS:

WE COMMAND YOU That you attach forthwith, so much of the property of *Paul Williams and Lorena Williams, his wife, defendants, to-wit*:

To-wit: one band of sheep near or in the vicinity of Steamboat Canyon.

if to be found in your County, on Security, as shall be of value sufficient to make the sum of *Three Hundred Sixty-One and 22/100* DOLLARS, and the probable costs of suit, to satisfy the demand of

Hugh Lee, dba Ganado Trading Post, plaintiff

and that you keep and secure it your hands the property so attached, unless replevined, that the same may be liable to further proceedings thereon, to be had before the Court and that you make return of the Writ showing how you executed the same.

GIVEN under my hand and seal of said Court, this *20th* day of *October*, 1952.

/s/ Merle W. Heap
Clerk of the Superior Court.

By: .....
Deputy Clerk

(Seal)

[fol. 6] RECEIVED

John T. Crosby 10-20-52
10:00 A.M.
Sheriff Apache County

IN THE SUPERIOR COURT OF *Apache* COUNTY
STATE OF ARIZONA

To *Merle W. Heap, Clerk of Superior Court*

By virtue of an Attachment issued out of the Superior Court of *Apache* County, State of Arizona, and to me directed against the within named Defendants, I *John T. Crosby Did attach A band of sheep as follows to-wit*

Five ewes two bucks four goats branded "R"
Nine ewes branded "W"
Twelve ewes branded "V"

WITNESS my hand this *21st* day of *October*, 1952.

/s/ John T. Crosby
Sheriff Apache Ct.

[fol. 7]

IN SUPERIOR COURT OF APACHE COUNTY

MOTION TO DISMISS ACTION BECAUSE OF LACK OF JURISDICTION
—Filed November 7, 1952

I

Come now the Defendants in the above entitled and numbered action and move this Honorable Court for an order dismissing said action for the reason and upon the grounds that the Defendants are members of the Navajo Tribe of Indians and reside on the Navajo Reservation, where they resided at the time of the commencement of this action; that at the time of the commencement of this action the Plaintiff, as shown by the face of his complaint, was the owner of a trading post known as Ganado Trading post at Ganado, Apache County Arizona.

II

That at the time of the commencement of this action the Plaintiff caused to be issued out of the above entitled court, in the above entitled action, a writ of attachment which he caused to be levied on property of the Defendants and property of two of their children; that the property which

was levied upon was located at a point called Steamboat Canyon, or in that vicinity, and was wholly on the Navajo Indian Reservation, and that the jurisdiction of any action belonged on said reservation in the Indian courts and not in the Superior Court of Apache County, Arizona, or any other court.

[fol. 8] Wherefore, Defendants pray that said action be dismissed as against them; that the property taken by levy under said writ of attachment be restored to them and for their costs and expenses of this action.

/s/ W. E. Ferguson, Attorney for Defendants.

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF ARIZONA,
County of Navajo.—ss.

Paul Williams, being first duly sworn, on his oath deposes and says: That he (sic) one of the defendants named in the foregoing, above-entitled and -numbered action; that he has read the motion to dismiss on the ground of lack of jurisdiction and the motion to dismiss on the ground of statute of limitation having run before the commencement of this action; and that the statements made in each of said motions are true and correct of his own knowledge;

That both affiant and Lorena Williams, his wife, are Navajo Indians and have lived on the Navajo Reservation at all times herein mentioned; that they did live on the Navajo Reservation when they were served with summons and attachment herein, and that they were served with both summons and attachment herein, and that they were served with both summons and attachment on the Navajo Reservation; that they have not committed any act or authorized [fol. 9] anything to be done or committed submitting themselves to the jurisdiction of the above-entitled Superior Court in the above-entitled and -numbered action.

Dated November 6, 1952.

/s/ Paul Williams.

Subscribed and sworn to before me this 6th day of November, 1952.

/s/ W. E. Ferguson, Notary Public.

Seal

My Commission expires July 6, 1953

(Notary Seal)

STATEMENT OF LEGAL POINTS

I

The defendants state as their legal points in support of their motion to dismiss this action for lack of jurisdiction in the court, that Navajo Indians may not be submitted to the general jurisdiction of a state court by action filed in the state court.

II

That the State of Arizona, by its enabling act, agreed that the jurisdiction of Navajo Indians pertaining to their affairs on the reservation may not be made the subject of Civil action in a state court.

[fol. 10]

III

That the Statute of Limitations of the State of Arizona, to-wit, Sec. 29-203, Subdivision 2, is a statute of repose, and that when a defendant appears for the purpose of raising the limitation of actions the same should recognized by the court and the action dismissed.

/s/ W. E. Ferguson, Holbrook, Arizona, Attorney for Defendants.

IN SUPERIOR COURT OF APACHE COUNTY

ANSWER—Filed November 7, 1952

Special Affirmative Defense No. I

The defendants here allege, without waiving their motions to dismiss this action, that they have at all times in

the plaintiff's complaint mentioned, been, and now are, members of the Navajo Tribe of Indians, living on the Navajo Reservation; that they were served with summons, complaint and attachment on the Navajo Reservation, and that property belonging to the defendants and others on the Navajo Reservation was taken from said reservation.

Special Affirmative Defense No. II

The defendants herein allege that the cause of action sued upon herein, as shown by the face of the complaint and as a matter of fact, was for merchandise purchased on and before June 10, 1949; that the same was not and is not represented by any contract in writing or otherwise [fol. 11] and was on open account; that no instrument in writing is set forth by the plaintiff to extend the time for bringing this action or to toll the running of the statute of limitations.

That more than three years elapsed after the last item of account sued on herein, to-wit, June 10, 1949, and the time of bringing this action on October 8, 1952; that the statute of limitations of the State of Arizona, as set forth in Sec. 29-203, Subdivision 2, provides that actions on open account shall be brought within three years following the last item of the account sued upon.

Wherefore, defendants pray that said action be dismissed and for their costs of court herein expended.

/s/ W. E. Ferguson, Holbrook, Arizona, Attorney for Defendants.

IN SUPERIOR COURT OF APACHE COUNTY

COUNTER-CLAIM—Filed November 7, 1952

Come now the defendants in the foregoing, above-entitled and numbered action, and for counter-claim against the plaintiffs allege:

I

That the defendants were, on the 20th day of October, 1952, the owners of certain sheep, and their daughters had

other certain sheep which they were herding on the Navajo [fol. 12] Reservation in Apache County, Arizona, at a point near Steamboat Canyon, when the plaintiff caused the sheriff of Apache County in the above-entitled action to wrongfully sue out a writ of attachment, and under said writ of attachment to levy upon and take from the possession of these defendants thirty-two (32) head of sheep which the plaintiff now holds against these defendants; that the sheriff took said sheep from the possession of the defendants, as aforesaid, wrongfully and without any authority of law and in an action wherein the above-entitled court had no jurisdiction, and took them to the place of the plaintiff where they have ever since been retained, and, as defendants are informed and believe, where said sheep now are; that at the time of taking said sheep, the defendants informed the sheriff and his deputy, Lauderdale, that a portion of said sheep and the greater portion thereof belonged to his daughters and in spite of such notice said sheriff and his deputy took the said sheep, as aforesaid; that by reason thereof defendants have been damaged as follows, to-wit: For the value of the sheep at that time, Nine Hundred Sixty and No/100 ($960.00) Dollars; for the cost of Transportation, Thirty-six and 80/100 ($36.00) (sic) Dollars; for time and trouble and effort and expense on the defendants' part in connection with the wrongful taking of said sheep, Five Hundred and No/100 ($500.00) Dollars, total, One Thousand Four Hundred Ninety-six and 80/100 ($1,496.80) Dollars, no part of which damage has been paid.

[fol. 13] Wherefore, defendants and counter-claimants pray judgment against the plaintiff and counter-defendant for the sum of One Thousand Four Hundred Ninety-six and 80/100 ($1,496.80) Dollars, and for his costs and expenses of this action.

/s/ W. E. Ferguson, Holbrook, Arizona, Attorney for Defendants and Counter-claimants.

Duly sworn to by Paul Williams, jurat omitted in printing.

[fol. 14] (The above Motion to Dismiss, Answer, and Counter-Claim were filed as one document on November 7, 1952.)

[fol. 15]

IN SUPERIOR COURT OF APACHE COUNTY

ANSWER TO COUNTER-CLAIM—Filed November 22, 1952

Comes now the Plaintiff, Hugh Lee, and in answer to Defendants' Counter-Claim filed herein, admits, denies, and alleges as follows: Answering paragraph One Defendants' Counter-Claim, Plaintiff admits that a writ of attachment was sued out in this Court and action and that certain sheep belonging to the Defendants' were taken into possession by virtue of said writ; denies that said sheep was taken from Defendants' wrongfully and without authority of law, and in this connection alleges that the open account herein sued upon was contracted in the County of Apache and within the jurisdiction of this Court. Denies that any of the sheep levied under said writ belong to the daughters of the Defendants' herein but that all of said sheep belonged to Defendants'; denies that the Defendants' have been damaged in the sum of $1,496.80 or in any other sum as a result of the seizure of said sheep under the writ as aforesaid.

Wherefore, Plaintiff and Counter-Defendants prayed that the Defendants' herein take nothing by their said Counter-Claim, and that this Plaintiff have the relief sought for in his Complaint.

/s/ M. V. Gibbons, St. Johns, Arizona, Attorney for Plaintiff and Counter-Defendant.

[fol. 16] *Duly sworn to by M. V. Gibbons, jurat omitted in printing.*

[fol. 17]

IN SUPERIOR COURT OF APACHE COUNTY

PETITION FOR ORDER OF SALE OF SHEEP AND GOATS NOW HELD UNDER ATTACHMENT—Filed February 2, 1953

Comes now the plaintiff, Hugh Lee, and respectfully petitions this Court for an order of sale of sheep and goats now held under a Writ of Attachment duly issued out of this Court, and as grounds therefor alleges:

That on the 20th day of October, 1952, a Writ of Arrachment (sic) was duly issued out of this Court in the above

entitled matter; that on the 21st day of October, 1952, the Sheriff of Apache County, Arizona, made his Return on said Writ, and took into his possession under the authority of said Writ, the following described sheep and goats: Five (5) ewes and Two (2) bucks and Four (4) branded "R", also Nine (9) ewes branded "W", also Twelve (12) ewes branded "V".

That since the said 21st day of October, 1952, serious questions of law have been raised and counsel have requested additional time in which to meet the same. That John T. Crosby, Sheriff of Apache County, Arizona, placed said animals in the possession of Plaintiff on the date above mentioned, with instructions to feed and care for the same until the further order of this Court.

[fol. 18] That great expense has been incurred by plaintiff, for and on behalf of said Sheriff, in the proper feeding and care for said animals; and that unless said animals are sold and the money impounded in this Court pending the settlement of this matter, the expense incident to the keeping and caring for said animals will exceed their value.

Wherefore, plaintiff prays that the Court will authorize the service of a copy of the petition filed herein upon the defendants, and that an early date be set (sic) hearing of this said petition.

/s/ M.V. Gibbons, Attorney for Plaintiff.

[fol. 19] *Duly sworn to by Hugh Lee, jurat omitted in printing.*

[fol. 20]

IN SUPERIOR COURT OF APACHE COUNTY

ORDER TO SHOW CAUSE—February 2, 1953

A verified Petition having been filed herein praying for an Order of this Court, directing the sale of certain sheep and goats now held in this matter under and by virtue of a Writ of Attachment, and the money impounded in this court pending the outcome of the matters involved in this action, and good cause appearing therefor;

It Is Ordered that the Defendants, Paul Williams and Lorena Williams, his wife, be, and they are hereby ordered and directed to appear before this Court, at the Court Room, in the above entitled Court, at St. Johns Apache County, Arizona, on Wednesday, the 11th day of February, 1953, at the hour of 10 o'clock in the forenoon of said day, and show cause, if any they have, why the Court should not enter its order directing the sale of all of these sheep and goats now held under a Writ of Attachment issued in this matter, as more fully shown in the Petition for Sale filed herein.

It Is Further Ordered, That a copy of this Order and Petition be served upon the Defendants, or their attorney, W. E. Ferguson, at least five (5) days before the hearing.

Done in open Court this 2nd day of February, 1953.

/s/ J. Smith Gibbons, Judge of the Superior Court.

[fol. 21]

IN SUPERIOR COURT OF APACHE COUNTY

RESPONSE AND OBJECTIONS TO SALE—Filed February 11, 1953

Comes now W. E. Ferguson, attorney for defendants in the foregoing above-entitled and numbered action and by way of response to Order to Show Cause, objects on behalf of the defendants to the proposed sale, and moves to quash and discharge the attachment and levy, and for grounds of objections and motion alleges:

I

That the Court in which the action is pending does not have jurisdiction of either the persons of the defendants or the property proposed to be sold.

II

That the sheriff took the said property on an invalid writ of attachment issued by the Court without jurisdiction to issue the same.

III

That the property was taken from the defendants on the Navajo Indian Reservation.

IV

That the petition shows on its face that the possession of the property has been delivered by the sheriff to the plaintiff in this action.

[fol. 22] This motion will be based on the files, papers and records herein in the office of the Clerk of this Court.

/s/ W. E. Ferguson, Holbrook, Arizona, Attorney for Defendants.

[fol. 23]

IN SUPERIOR COURT OF APACHE COUNTY

Transcript of Testimony of Hearing on Petition for Order of Sale of Sheep and Goats

APPEARANCES

The above-entitled matter came on regularly for hearing on the 11th day of February, 1953, before the Honorable J. Smith Gibbons, Judge of the above-captioned Court; the Plaintiff was present and represented by his Attorneys M. V. Gibbons, of St. Johns, Arizona, and McQuatters and Stevenson, by Wm. Stevenson, of Flagstaff, Arizona, and the Defendants were represented by their attorney W. E. Ferguson of Holbrook, Arizona.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Heretofore and on the 2nd day of February, 1953, the Plaintiff filed herein a Petition for Order of Sale of Sheep and Goats Now Held Under Attachment. Based on said Petition was an Order to Show Cause, directing the Defendants to show cause why the petition should not be granted, and the Defendants have, by and through Mr. W. E. Ferguson, filed a responsive return. You gentlemen may go ahead and make any showing you desire.

Mr. Stevenson: If the Court please, we have presented to the Court for hearing at this time a petition requesting an order of sales with respect to certain personal property belonging to the Defendants, Paul Williams and Wife, and the Defendants, by and through their counsel, W. E. Fer-
[fol. 24] guson, have filed a response thereto. The response to the petition does not go to and attack the validity of the averments appearing in the petition with respect to the nature of the property, the excessive cost that is being incurred, and if this situation continues there will be nothing to apply on the bill, if at the hearing of the case it should be determined in favor of the Plaintiff. However, in the response to the petition one of the objections raised relates to the fact that the petition states that the property is in the possession of the Plaintiff. It is quite likely that by reason of the wording used in the allegations the Court might find an abandonment or vacation of the attachment. We, therefore, at this time respectfully request the Court to allow us to place the Plaintiff on the stand and take his testimony with respect to the facts surrounding his custody and care of the sheep, and will, upon presenting that testimony, move the Court for permission to amend the petition to allege the true facts relating to that custody.

Mr. Ferguson: In response to argument of counsel, we of course don't deny, and I don't think we are supposed to under our new rules allege things that don't exist or weren't the truth of the situation, and we didn't deny that it is expensive. It is undoubtedly expensive to keep these animals, but we do think this: That if the amendment is permitted it should not be made retro-active and relate back to the time of the taking of the sheep, or the delivery of the
[fol. 25] possession to the Plaintiff, but as I said a while ago, there is nothing to stop them from re-issuing or re-levying, if they ever had the right. We don't grant they ever had the right, but if they ever did have they could re-issue, but the purpose of it is to hold the proposition in its present existence; that is, they have in fact abandoned their levy or lien. I don't believe there is any question whether or not a Sheriff can turn property to any party in the action in advance of the Court's decision on that.

The Court: The objection will be overruled and the Plaintiffs will be permitted to put on testimony as to whose possession the sheep should actually have been.

Thereupon, Mr. Hugh Lee was called as a Witness and being first duly sworn testified as follows:

Direct examination.

By Mr. Gibbons:

Q. Your name is Hugh Lee and you are the Plaintiff in this action No. 2913?

A. Yes, sir.

Q. Now at issue before the Court?

A. Yes.

Q. Mr. Lee, will you state to the Court the circumstances under which a band of sheep and goats were placed on your premises at Ganado?

A. Well, sir, I came to St. Johns to my Attorney and asked that garnishment be made on these sheep of Mr. [fol. 26] Paul Williams, because he had been neglectful in making any payments on his bill. After several tries I had become convinced the only way I could collect the bill was by garnishment. At the time the Sheriff came to Ganado, I was not there. In order that he could find the sheep he picked up my assistant manager of the store, Mr. Wendell Harris, who assisted the Sheriff in finding Mr. Williams, and when they found the Sheep they hired a truck to haul the sheep into Ganado, and at the time he left the sheep he unloaded them in the corral of the Ganado Trading Company, and left instructions with Mr. Harris that we were to take care of them, feed them and protect them until further notice by the Court, and that is the way it has been done. We have done everything that we could do to take care of the sheep and protect them from loss, and they are still in the same corral he put them in.

Q. You were not present at the time the Sheriff delivered these sheep at the corral?

A. No, sir, I was not home.

Q. How long before you returned and knew a band of sheep was at your place?

A. I came home late that night. Evidently the sheep were put in there around six or seven o'clock in the evening, and I returned home around midnight.

Q. Were you, or any of your employees, present at the time the sheep were actually taken in possession of the Sheriff under the Writ?

[fol. 27] A. Yes, sir, Mr. Harris was accompanying the Sheriff to show him where Mr. Williams lived.

Q. As to the number of sheep and the actual sheep that were taken, you took no part in pointing out or telling the Sheriff which sheep?

A. No, I got the information from the District Supervisor——

Mr. Ferguson: I don't really see that is a question involved here at all.

The Court: Objection sustained.

By Mr. Gibbons:

Q. What time was the sheep left on your premises?

A. I am not positive. I think around six or seven o'clock in the evening.

Q. What day?

A. I believe October 21st.

Q. And since that time you have had them there in your corral?

A. Yes, sir.

Q. Can you submit to the Court the approximate cost of taking care of those sheep per day and give the total?

A. We have set the cost of $4.00 a day, beginning October 22nd.

Q. Four Dollars a day represents the total cost of feed, care, water and so on, is that right?

A. That is right sir.

Q. And what is the total cost up to date, if you can tell, of the care of those sheep, until today?

A. I haven't figured it out. I presented the bill to the [fol. 28] Sheriff on the first of January. I think it was in the amount of $284.00.

Mr. Gibbons: I wonder if the Court will permit the witness to take time out and give the Court what he figures the cost up to date of keeping the sheep?

The Court: That really isn't controverted.

Mr. Gibbons: It is just a question of showing the necessity of a sale.

The Court: That isn't controverted. The only question that has been raised is the question of possession. I think counsel even admits it is expensive.

Mr. Gibbons: To back up our petition, we had alleged that the costs were excessive and if they were longer kept—

The Court: That isn't controverted, Mr. Gibbons. They haven't controverted that. In fact counsel has admitted it. The only thing the Court is particularly interested in is the question of possession.

By Mr. Gibbons:

Q. You were not there at the time the Sheriff personally left the sheep at your place, with instructions to take care of them?

A. No, sir.

Q. Have you had any conversation with the Sheriff relative to this since that time?

A. The only contact I have had with him is asking him when he was going to pay for the feed. He left full instructions with Mr. Harris to take care of the Sheep at Ganado Trading Company.

[fol. 29] Mr. Gibbons: I think that is all.

Cross examination.

By Mr. Ferguson:

Q. Mr. Lee, did the Sheriff ever give you any paper or instrument in writing at all concerning your possession, or having possession of the sheep?

A. No, sir.

Q. To your knowledge the sheep were there at your place and in your corral the very day they were attached by the Sheriff?

A. Yes, sir.

Q. As a matter of fact the Sheriff never did take them into his possession, other than to bring them to your corral and left them right there, is that right?

A. Well, sir, he picked them up and put them in a truck. He contracted for their hauling them to my corral, and left them there with instructions to feed them until further order, and so far we have had no further order, and we have been feeding them.

Q. You are the Plaintiff in this action?

A. Yes, sir.

Q. Has the Sheriff been back there since the day he actually left them in your corral?

A. No, sir.

Mr. Ferguson: I believe that is all.

[fol. 30] Redirect examination.

By Mr. Gibbons:

Q. As a matter of fact, your investigation showed, when you did return, the Sheriff had in his possession the sheep from the point where they were delivered in the truck to your place?

A. Yes, sir.

Mr. Gibbons: That is all.

Mr. Ferguson: That is all.

. . . . . .

Mr. Ferguson: I want to call the Court's attention to the return on the Writ in this case. Of course, you will take judicial notice of the records.

MOTION TO AMEND PETITION FOR ORDER OF SALE AND RULING THEREON

Mr. Stevenson: If Your Honor please, at this point we will move the Court for permission to amend the Petition for Order of Sale with respect to paragraph 3, page 1, as follows: It now reads: "That John T. Crosby, Sheriff of Apache County, Arizona, placed said animals in the possession of Plaintiff on the date above mentioned, with instructions to feed and care for the same until the further order of this Court". We move that it be amended to read as follows: "That John T. Crosby, Sheriff of Apache County, Arizona, has since the said 21st day of October,

1952, held the said property pursuant to said Writ of Attachment."

Mr. Ferguson: That is alleging a conclusion. I object to the amendment, and it also denies the testimony given [fol. 31] by the Plaintiff himself. He says nothing about how he is holding the property, except he just fed it and cared for it. I object to the amendment.

Mr. Gibbons: Doesn't the Writ show the Sheriff took in his possession the personal property?

The Court: It says, "He did attach a band of sheep as follows, to-wit: Five ewes two bucks four goats branded 'R'; Nine ewes branded 'W', Twelve ewes branded 'V'.

Mr. Ferguson: If I remember the levy under attachment law there are two ways it can be accomplished, and the Sheriff's return should show which way it was accomplished. The law provides that the levy be made by recording the copy of the notice, and the other one is that he took them into his possession, and the law is flat and positive that he must retain them in his possession. Now, if he lets them out of his possession he should show something in the record as to how it happened.

Mr. Stevenson: We move the Court that the last sentence of paragraph 3, page 1 of the petition be amended to read as follows: "That John T. Crosby, Sheriff of Apache County, Arizona, has since the said 21st day of October, 1952, held the said property pursuant to said Writ of Attachment.

Mr. Ferguson: It is against the facts.

The Court: There is some question there, alright. I think the objection will be overruled and the amendment [fol. 32] be permitted. After all this will be a question to come out later on when we get all the facts. I think the Clerk could make the amendment now by interlineation.

(The matter of a pre-trial conference was discussed between Court and counsel, and also the matter of filing briefs prior to said pre-trial hearing.)

Order Granting Petition for Order of Sale

The Court: Let the record show that the petition for Order of Sale is granted and the Sheriff authorized to sell said property in the manner provided by law, and that the

proceeds from said sale are to be impounded in the Clerk of Court's Office, subject to the final determination of this matter. I think it might be well to have that order in writing, and we will have it in the file.

The pre-trial hearing is set for March 4th, 1953, at 10: o'clock a.m., in Holbrook, Arizona, by agreement of counsel.

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 33]

IN SUPERIOR COURT OF APACHE COUNTY

SUPPLEMENTAL PETITION FOR DISPOSITION OF ATTACHED PROPERTY—Filed February 21, 1953

Comes Now Plaintiff, Hugh Lee, by his attorneys, McQuatters & Stevenson, and respectfully represents and shows unto the Court:

That he is plaintiff in the above entitled cause; that by virtue of a Writ of Attachment issued in this cause on the 20th day of October, 1952, John T. Crosby, Sheriff of Apache County, did, on the 21st day of October, levy on, seize and attach the following described property:

Five ewes, two bucks and four goats branded "R";
Nine ewes, branded "W";
Twelve ewes, branded "V";

That on February 11, 1953, upon proper application this Court entered an order authorizing the sale of said animals in the manner provided by law.

That the ewes presently in the custody of the Sheriff pursuant to said Writ of Attachment have lambed; that said increase, namely 18 lambs, is likewise held by said Sheriff by virtue of said Writ of Attachment; that the cost of feeding and maintaining the same is expensive and that the value of said property is held pending the determination of this action will, in all likelihood, be greatly diminished by reason of such expense.

[fol. 34] That defendants have paid to plaintiff the sum of $300.00 upon the account alleged in plaintiff's Complaint.

That plaintiff is informed and believes, and therefore alleges that the proceeds received from the sale of the prop-

erty originally attached will suffice to satisfy the judgment, if for plaintiff, together with Court costs and costs and expenses incurred by the Sheriff in connection with said attachment.

That by reason of the facts herein set forth it will be unnecessary to sell and dispose of the increase of said attached property, to wit, 18 lambs; that further retention of said animals is unnecessary and will result in the accrual of needless expense.

Wherefore, plaintiff prays that this Court enter its order releasing said 18 lambs from custody and authorizing the Sheriff of Apache County, Arizona, to return the same to defendants.

Dated This ..... day of February, 1953.

McQuatters & Stevenson, by /s/ Wm. W. Stevenson, 203 Talkington Building, Flagstaff, Arizona, Attorneys for Plaintiff.

[fol. 35]

IN SUPERIOR COURT OF APACHE COUNTY

STIPULATION OF COUNSEL RELATING TO SALE OF ATTACHED PROPERTY AND TO HEARING ON PETITION FOR DISPOSITION OF ATTACHED PROPERTY—Filed March 3, 1953

Whereas, the Superior Court of the State of Arizona, in and for the County of Apache, did on the 11th day of February, 1953, enter an order authorizing the sale of the following described property.

Five ewes, two bucks, four goats branded "R";
Nine ewes branded "W";
Twelve ewes branded "V";

and

Whereas the plaintiff has heretofore, by Supplemental Petition for Disposition of Attached Property, presented to the Court facts showing an increase in amount of attached property, namely, eighteen lambs, and requested, upon the basis of the facts set forth in such Petition that

said property be released from attachment and returned to the defendants; and

Whereas, counsel for plaintiff and defendants are agreed that all matters relating to the sale of said attached property and relating to the release of the increase thereto should be disposed of with the least possible delay,

Now, therefore,

[fol. 36] It Is Stipulated by and between counsel for plaintiff and defendants:

1. That notice of sale of said personal property held pursuant to attachment shall be given as provided by law in such cases made and provided, except that notice of sale shall not be required to be posted for a period of more than five days before the day of sale.

2. That plaintiff's Supplemental Petition for Disposition of Attached Property is submitted to the Court for its consideration without notice of hearing required to be given defendant's attorney, and that the matter may be considered by the Court upon the present state of the record.

3. That defendants' objections to the original Petition for Order of Sale of Sheep and Goats Now Held Under Attachment shall likewise apply to the Supplemental Petition, that is to say, defendants do not, by the terms and provisions of this stipulation, recognize the Court's jurisdiction and authority in the premises with respect to disposition of whatever nature of the property or any increase thereto.

4. That the stipulations and agreements of counsel herein specified do not constitute a waiver of the fundamental rights in the premises, nor do such stipulations constitute defendants' recognition of the jurisdiction of this Court or the Sheriff of Apache County to issue a writ of attachment, to levy upon and seize property or to enter orders with [fol. 37] respect to the disposition of the same within that portion of the Navajo Reservation situate in Apache County, Arizona.

Dated this 20th day of February, 1953.

McQuatters & Stevenson, by Wm. W. Stevenson, 203 Talkington Building, Flagstaff, Arizona, Attorneys for Plaintiff.

W. E. Stevenson, (sic) Holbrook, Arizona, Attorney for Defendants.

[fol. 38]

IN SUPERIOR COURT OF APACHE COUNTY

ORDER OF DISPOSITION OF ATTACHED PROPERTY—March 3, 1953

Plaintiff having heretofore filed his Supplemental Petition seeking disposition of the attached property, and it appearing therefrom that there is an increase thereto, to-wit, eighteen (18) lambs, and further that it will be unnecessary to sell said increase for the purpose of satisfying the amount of plaintiff's claim, and

The parties, by their counsel, having stipulated with respect to the hearing of said Supplemental Petition, and good cause appearing therefor,

It Is Ordered that said increase, namely, eighteen (18) lambs, is hereby released from attachment, and the Sheriff of Apache County, Arizona, be and he is hereby authorized to return said property to the defendants.

Dated this *3rd* day of March, 1953

/s/ J. Smith Gibbons, Judge.

Approved as to form:

/s/ W. E. Ferguson, Attorneys for Defendants.

[fol. 39]

IN SUPERIOR COURT OF APACHE COUNTY

ORDER RELATING TO SALE OF ATTACHED PROPERTY —March 3, 1953

Pursuant to stipulation of counsel,

It Is Ordered that that property which is the subject of this Court's order of February 11, 1953, relating to the sale and disposition thereof, shall be sold by the Sheriff of

Apache County in the manner provided by law, upon five (5) successive days notice of sale.

Dated This *3rd* day of March, 1953

/s/ J. Smith Gibbons, Judge.

Approved as to form:

W. E. Ferguson, Attorney for Defendants.

[fol. 40]

IN SUPERIOR COURT OF APACHE COUNTY

WRIT DIRECTING SALE OF ATTACHED PROPERTY—March 7, 1953

THE PEOPLE OF THE STATE OF ARIZONA
TO THE SHERIFF OF APACHE COUNTY,
GREETING:

WHEREAS, a motion was made and entered in the above titled cause praying, among other things, that certain property heretofore levied upon under attachment herein be sold by the Sheriff; and,

WHEREAS, the said motion came on to be heard the 11th day of February, 1953, and an order was made and entered directing the Sheriff of Apache County, Arizona, to sell the property hereinafter described in the same manner as sales of personal property under execution, the proceeds thereof to be paid into the Clerk of Court of Apache County, Arizona; and,

WHEREAS, by order of this Court entered on the 3rd day of March, 1953, pursuant to stipulation of counsel it was provided that Notice of Sale be shortened to five days;

NOW, THEREFORE, you are hereby commanded to sell the said property after giving notice as herein specified, the proceeds of such sale to be delivered over to the Clerk of this Court pending final disposition and settlement of the case.

[fol. 41] Said property is described as follows:

Five ewes, two bucks, four goats branded "R";
Nine ewes branded "W";
Twelve ewes branded "V".

WITNESS my hand and the seal of the Superior Court of Apache County, Arizona, this *7th* day of March, 1953.

(SEAL)

/s/ MERLE W. HEAP
Clerk of the Superior Court

By .....
Deputy

[fol. 42]

IN SUPERIOR COURT OF APACHE COUNTY

NOTICE OF SALE—March 9, 1953

Whereas, by virtue of a writ of attachment issued out of and under the seal of the Superior Court in and for the County of Apache, in the State of Arizona, on the 20th day of October, 1952, in the above entitled action, I, John T. Crosby, Sheriff of Apache County, Arizona, levied upon and attached all the right, title and interest of the defendants in and to the following described personal property:

Five ewes, two bucks, four goats branded "R";
Nine ewes branded "W";
Twelve ewes branded "V";

and

Whereas, on the *3rd* day of March, 1953, the above Court entered its order directing that I, John T. Crosby, Sheriff of Apache County, Arizona, proceed to advertise and sell the above described property to satisfy the amount of the plaintiff's claim, to wit, the sum of Three Hundred Sixty-one and 22/100 ($361.22), together with probable costs of said action, and costs and expenses relating to sale;

Now, therefore,

Notice Is Hereby Given that I, the undersigned Sheriff, as aforesaid, will sell the above described personal property to the highest bidder, for cash, at public auction, at .....

[fol. 43] *The Corral, at the Ganado Trading Post, Ganado, Arizona*

on the *16th* day of March, 1953, at the hour of 10:00 A. M., to satisfy the said attachment, together with the costs and probable costs in connection therewith.

Dated this *9th* day of March, 1953.

John T. Crosby, Sheriff.

[fol. 44]

IN SUPERIOR COURT OF APACHE COUNTY

PETITION FOR MODIFICATION OF ORDERS RELATING TO SALE AND DISPOSITION OF ATTACHED PROPERTY—Filed March 26, 1953

Comes now plaintiff and respectfully represents and shows unto the Court:

1. That plaintiff presented to this Court on February 11, 1953, his petition for order of sale of sheep and goats held under attachment and the Court, being advised in the premises, entered its order directing the sale of the attached property.

2. That thereafter plaintiff brought to the Court's attention the fact that there was an increase in the band of sheep held under attachment and the fact that the defendant had paid a portion of the claim set forth in plaintiff's Complaint, pursuant to which the Writ of Attachment had theretofore issued, all of which more fully appears from the records and files in this case.

3. That upon being informed of such facts, the Court entered its order authorizing and directing the sale of the property originally attached, or so much thereof as might be necessary to satisfy plaintiff's claim, together with probable costs, and entered its order authorizing and directing the release of the increase.

4. That pursuant to such orders and by reason of stipulation entered into by counsel for plaintiff and defendant, [fol. 45] the sale of attached property was set for March 16, 1953.

5. That plaintiff has instructed the Sheriff to continue the said sale until March 26, 1953, by reason of the fact that plaintiff is informed and believes, and therefore alleges

that the said increase, i.e. lambs, cannot be separated from the ewes originally attached without causing loss of the said increase and resultant damage to defendant.

Wherefore, plaintiff prays:

1. That the orders relating to sale and disposition of attached property heretofore entered by (sic) modified to authorize and direct the sale of the property originally attached, together with the increase thereof, or so much of all of said property as shall be necessary to satisfy the balance of plaintiff's claim, together with probable costs, and further modified to provide that all remaining property be released to the defendant.

2. That the writs heretofore issued out of this Court pursuant to said orders relating to disposition and sale of attached property be quashed and a writ issued in the place and stead thereof, directing the Sheriff to dispose of said property in the manner herein requested.

Dated this 19th day of March, 1953.

McQuatters & Stevenson, by Wm. W. Stevenson, Attorneys for Plaintiff.

[fol. 46] *Duly sworn to by Wm. W. Stevenson, jurat omitted in printing.*

[fol. 47]

IN SUPERIOR COURT OF APACHE COUNTY

STIPULATION OF COUNSEL RELATING TO SALE OF ATTACHED PROPERTY AND RELATING TO THE HEARING ON PLAINTIFF'S PETITION FOR MODIFICATION OF ORDERS PERTAINING TO SALE AND DISPOSITION ON ATTACHED PROPERTY

—Filed March 26, 1953

Whereas, the plaintiff in the above subject case has prepared and proposes to file a petition seeking modification of the following specified Court orders:

Order Relating to Sale of Attached Property;
Order of Disposition of Attached Property;

and requesting the quashal of all writs heretofore issued out of the Superior Court of the State of Arizona in and

for the County of Apache pursuant to the above specified orders; and,

Whereas, plaintiff seeks such modification by reason of the fact that the sale and disposition of the attached property and the increase thereto as specified in said orders will result in loss and injury to the defendants; and,

Whereas, it appears that the method of sale and disposition of said property as proposed by plaintiff and requested in the petition above referred to is to the best interest of all parties concerned; and,

[fol. 48] Whereas, the plaintiff has continued the sale from the 16th day of March, 1953, to the 26th day of March, 1953, for the purpose of securing the modifications above referred to; and,

Whereas, the plaintiff desires that said petition be presented for hearing before the Court without the necessity of delay incident to giving notice to defendants and their counsel,

Now, Therefore, it is stipulated by and between counsel for plaintiff and defendants:

1. That plaintiff's petition for modification of orders relating to sale and disposition of attached property may be submitted to the Court forthwith for its consideration without notice of hearing thereof to defendants' attorneys and that the matter may be considered by the Court upon the present status of the record.

2. That defendants waive their right to notice of hearing said petition ~~and agree that a sale held on March 26, 1953, pursuant to such order or orders of the Court as may be entered upon presentation of plaintiff's petition for modifications, shall constitute a legal sale held pursuant to notice duly given.~~

W.W.S.
W.E.F.
3/26/53

3. That defendants' objections to the original petition for Order of Sale of Sheep and Goats Now Held under At-
[fol. 49] tachment shall likewise apply to plaintiff's Peti-

tion for Modification of Orders relating to Sale and Disposition of Attached Property; that is to say, defendants do not, by the terms and provisions of this stipulation, recognize the Court's jurisdiction and authority in the premises with respect to its disposition of the attached property or the increase thereto.

4. That the agreements and stipulations of counsel herein specified do not constitute a waiver of defendants' rights in the premises except to the extent herein provided, nor do such agreement and stipulation constitute a recognition on defendants' part of the jurisdiction of this Court or the Sheriff of Apache County to levy upon and seize property of these defendants when such property is situate within that portion of the Navajo Reservation situate in Apache County, Arizona.

Dated this 26th day of March, 1953.

McQuatters & Stevenson, by /s/ W. W. Stevenson,
Attorneys for Plaintiff.

/s/ W. E. Ferguson, Attorneys for Defendants.

[fol. 50]

IN SUPERIOR COURT OF APACHE COUNTY

ORDER OF SALE AND DISPOSITION OF ATTACHED PROPERTY
—March 26, 1953

Plaintiff having heretofore filed his petition for modification of orders relating to sale and disposition of attached property, seeking modification of the following orders of this Court:

Order of Disposition of Attached Property;
Order Relating to Sale of Attached Property:

and the quashal of writs issued pursuant to such orders; and,

It appearing to the Court that defendants, by and through their attorney, have stipulation that said petition may be heard without notice, and plaintiff appearing at this time by his attorneys and the Court being advised in the premises and good and sufficient reason appearing therefor,

It Is Ordered that the above specified orders of this Court be and the same are hereby modified in the manner hereinafter set forth and it is further ordered that the writs directing the sale and disposition of attached property heretofore issued out of this Court be quashed.

It Is Further Ordered that the attached property, described as follows:

Five ewes, two bucks, four goats branded "R";
Nine ewes, branded "W";
Twelve ewes branded "V";

[fol. 51] and the increase thereof, to wit, 18 lambs, or so much of said property together with the increase as shall be necessary to satisfy the balance of plaintiff's claim, together with costs and probable costs, shall be sold by the Sheriff of Apache County in the manner provided by law and in such manner as shall protect and preserve the increase, and that any property remaining be released to the defendants.

~~It Is Further Ordered that said sale shall be held on March 26, 1953, pursuant to stipulation of counsel.~~

(Initialed)
J.S.G.

It Is Further Ordered that the said Sheriff of Apache County, Arizona, shall make return to this Court within five (5) days from the date of such sale of what he has done pursuant to this order, and shall deposit with the Clerk of this Court the proceeds of such sale, pending final adjudication of the case.

Done on open Court this *26th* day of March, 1953.

/s/ J. Smith Gibbons, Judge of the Superior Court.

[fol. 52]

IN SUPERIOR COURT OF APACHE COUNTY

WRIT DIRECTING SALE AND DISPOSITION OF ATTACHED PROPERTY—March 26, 1953

THE PEOPLE OF THE STATE OF ARIZONA
TO THE SHERIFF OF APACHE COUNTY,
GREETING:

WHEREAS, a motion was made and entered in the above entitled cause, praying, among other things, that certain property heretofore levied upon under attachment herein be sold by the Sheriff; and,

WHEREAS, the said motion came on to be heard the 11th day of February, 1953, and an order was made and entered directing the Sheriff of Apache County, Arizona, to sell the property hereinafter described in the same manner as sales of personal property under execution, the proceeds thereof to be paid in to the Clerk of Court of Apache County, Arizona; and,

WHEREAS, by order of this Court entered on the 3rd day of March, 1953, the said order of February 11, 1953, was modified in certain particulars;

NOW, THEREFORE, pursuant to said orders and the modifications thereof, you are hereby commanded to sell the property hereinafter described, or so much thereof as shall be necessary and in such manner as shall preserve and protect the increase in the band of sheep held under attachment to satisfy plaintiff's claim, together with costs [fol. 53] and probable costs, proceeds of such sale to be delivered over to the Clerk of this Court, pending final disposition of the case. Said property is described as follows:

Five ewes, two bucks, four goats branded "R";
Nine ewes branded "W";
Twelve ewes branded "V";

together with the increase thereto, to wit, 18 lambs.

~~It Is Further Ordered that said sale shall be held on March 26, 1953, pursuant to stipulation of counsel for plaintiff and defendants.~~

(Initialed) E.J.

WITNESS my hand and the seal of the Superior Court of Apache County, Arizona, this *26* day of March, 1953.

MERLE W. HEAP
Clerk of the Superior Court

(SEAL)

By /s/ Elmo Jarvis, Deputy

[fol. 54]

IN SUPERIOR COURT OF APACHE COUNTY

RETURN OF SALE OF PERSONAL PROPERTY—March 31, 1953

STATE OF ARIZONA,
County of Apache.—ss.

I, John T. Crosby, Sheriff of Apache County, Arizona, hereby certify that pursuant to writs relating to sale and disposition of attached property, issued out of the Superior Court of Apache County, Arizona, in the above entitled cause on the 3rd day of March, 1953, as modified on March 26, 1953, I proceeded to execute the same in the following manner:

That I gave public notice of the sale of said property by posting a printed notice of the time and place of sale in three public places in Apache County for more than five (5) days prior to the date of sale, namely the 16th day of March, 1953, and that on the said 16th day of March, 1953, I continued the said sale to the 26th day of March, 1953, by due and legal notice of continuance attached to each of the original notices of sale as posted and that on the said 26th day of March, 1953, at the hour of 2:00 o'clock P. M. at Ganado Trading Post, Ganado, Apache County, Arizona, the same being the date and place of sale prescribed by said notice, I sold at public auction for cash in hand on said date the personal property described for the sums and to the persons hereinafter named:

[fol. 55]

4 goats	$38.00	Mrs. Dick Teller
2 rams	$52.25	Joe Begay
1 dry ewe	$10.00	H. A. Martin
1 dry ewe	$11.50	Irene Williams
1 dry ewe	$16.50	Burt Wanukea
1 dry ewe	$16.00	Burt Wanukea
1 dry ewe	$21.25	Guy Williams
1 ewe with lamb	$ 7.00	Denet Chelly
1 ewe with lamb	$14.50	Tom McCabe
1 ewe with lamb	$21.00	Glennie May Kee
1 ewe with lamb	$20.00	Irene Williams
1 ewe with lamb	$21.00	Lena Begay
1 ewe with lamb	$23.00	Marie Tsosie

That said property was sold singly or in lots in a manner calculated to bring the highest and best prices therefor and that the order of sale of said animals, namely goats, rams, dry ewes and finally ewes with lambs was the order of sale requested by the defendants; that in each sale as above specified each animal or animals sold was the number offered for sale at that time; that the person above named as buyer was the successful bidder in each particular instance; that his or her bid was the highest and best bid and that all sales were announced both in English and Navajo; that upon the conclusion of the foregoing sales there remained ~~ten~~ Eleven J.T.C. ewes and *12* lambs, all of which property was thereupon immediately released to the defendants.

That there was due to satisfy plaintiff's claim, costs and probable costs, according to plaintiff's statement, the sum of $273.92.

[fol. 56] That there was received from the foregoing sales the sum of $272.00; that the defendants made up the sum of $2.00 and that there is returned herewith into Court, pursuant to instructions contained in the above mentioned writ, for the purpose of satisfying plaintiff's claim, with costs and probable costs, the sum of $274.00.

That there are attached hereto and by reference made a part of this return the following instruments:

Exhibit "A"—Writ Directing Sale and Disposition of Attached Property.
Exhibit "B"—Statement of Costs and Expenses relating to this transaction.

Dated this *31st* day of March, 1953.

/s/ John T. Crosby, Sheriff of Apache County.

EXHIBIT "B"

APACHE COUNTY SHERIFF
ST. JOHNS, ARIZONA
March 31, 1953

STATEMENT OF COSTS AND EXPENSES RELATING TO ATTACHMENT AND ORDER OF SALE IN THE MATTER OF: Hugh Lee vs. Paul and Lorena Williams, case #2913.

Item #	
1—Balance Due on plaintiff's account	$81.22
2—Expense moving attached sheep from steamboat to Ganado.	35.00
[fol. 57]	
3—Expense returning Sheep to Defendant, left over from sale.	20.00
4—Judgment fee.	5.00
5—Filing fee.	10.00
6—Service fee 2 Summons.	3.00
7—Service Writ of Attachment.	2.00
8—Mileage in connection with service of Attachment & 2 Summons.	38.10
9—20c per $100.00 on $300.00 sale and $2.50 for levying and returning the the Writ of Attachment.	3.10
10—Mileage in connection with Original Sale March 16, 1953, and continuance thereof to March 26, 1953.	28.20
11—Posting notice of Sale, including mileage	16.10
12—Cost of interpreter for Sale	5.00
Total EXPENSES AND COSTS	$246.72

Dated at St. Johns, Arizona this 31st day of March, 1953.

/s/ JOHN T. CROSBY
John T. Crosby, Sheriff
Apache County
St. Johns, Arizona

[fol. 58]

IN SUPERIOR COURT OF APACHE COUNTY

MOTION TO DISMISS COUNTERCLAIM—Filed April 16, 1953

Comes now the plaintiff, Hugh Lee, by and through his attorneys, and moves the Court for an order dismissing defendants' Counterclaim, upon the ground and for the reason that the said Counterclaim fails to state a claim against this plaintiff upon which relief can be granted.

Dated this 15th day of April, 1953.

M. V. Gibbons and McQuatters & Stevenson, By /s/ Wm. W. Stevenson, Attorneys for Plaintiff.

[fol. 59]

IN SUPERIOR COURT OF APACHE COUNTY

MOTION FOR MORE DEFINITE STATEMENT —Filed April 16, 1953

Comes now the plaintiff Hugh Lee, by and through his attorneys, and without waiving his Motion to Dismiss Counterclaim heretofore made and filed in the above titled cause, but always insisting upon the same, moves the Court for an order requiring defendants to make a more definite and specific statement of the allegations contained in defendants' said Counterclaim, specifically those allegations contained in Paragraph I thereof, as follows:

"....when the Plaintiff caused the sheriff of Apache County in the above-entitled action to wrongfully sue out a writ of attachment, and under said writ of attachment to levy upon and take from the possession of these defendants thirty-two (32) head of sheep which the plaintiff now holds against these defendants;..."

The foregoing motion requesting an order requiring defendants to furnish a more definite statement of the above quoted portion of defendants' Counterclaim is made and based upon the following grounds:

1. Plaintiff is unable to determine the meaning of defendants' allegations to the effect that plaintiff caused the Sheriff to wrongfully sue out a Writ of Attachment.

2. Plaintiff is unable to determine the meaning of defendants' allegation which states that plaintiff now holds said sheep against these defendants.

[fol. 60] 3. The quoted portion of defendants' Counterclaim contains the following conclusion of law: " . . . Plaintiff caused the sheriff of Apache County . . . to wrongfully sue out writ of attachment, . . . ". It is respectfully submitted that the words "wrongfully sue out" allege a conclusion of law and do not state the ultimate facts which plaintiff is entitled to know and have before him in the preparation of his Answer to said Counterclaim.

4. The allegations specifically quoted herein are vague, indefinite and uncertain and by reason thereof it is impossible for plaintiff to properly prepare his Reply to the said Counterclaim.

Dated April *15*, 1953.

M. V. Gibbons and McQuatters & Stevenson, By /s/ Wm. W. Stevenson, Attorneys for Plaintiff.

[fol. 61]

IN SUPERIOR COURT OF APACHE COUNTY

BILL OF PARTICULARS—Filed April 23, 1953

The following is a Bill of Particulars of plaintiff's demand in this cause and for the recovery of which this action is brought, to wit:

Date 1950		Explanation	Debit	Credit	Balance
Jan.	16	Account Forward			533.49
		Paid		40.00	493.49

Date		Explanation	Debit	Credit	Balance
		Merchandise	28.25		521.74
		Merchandise	5.50		527.24
Jan.	30	Credit cash		40.00	487.24
		Merchandise	22.00		509.24
			2.50		511.74
		Merchandise	1.40		513.14
Feb.	4	Merchandise	7.95		521.09
Feb.	6	Merchandise	11.00		
		Merchandise	3.75		535.84
Feb.	10	Merchandise	5.50		541.34
Feb.	16	Paid		40.00	501.34
		Merchandise	22.00		523.34
		Merchandise	1.25		524.59
Feb.	18	Merchandise	5.35		529.94
Feb.	25	Merchandise	5.54		535.48
		Merchandise	1.10		536.48
March	3	Paid on account		40.00	496.58
		Merchandise	16.50		
			6.25		519.33
[fol. 62]					
March	9	Paid on account		40.00	479.33
		Merchandise	22.00		
			2.10		
			1.65		505.08
March	16	Merchandise	11.00		516.08
March	23	Credit on account		40.00	476.08
		Merchandise	19.45		495.53
March	25	Merchandise	22.00		517.53
March	31	Merchandise	2.84		520.37
April	1	Merchandise	1.10		521.47
April	5	Credit cash		40.00	481.47
		Merchandise	11.00		
			6.25		498.72
April	7	Merchandise	11.00		509.72
April	13	Paid on account		40.00	469.72
		Merchandise	6.25		
			22.00		497.97
April	15	Merchandise	1.10		499.07
April	17	Merchandise	16.50		515.57

Date	Explanation	Debit	Credit	Balance
	Cash	37.50		553.07
	Merchandise	5.00		558.07
April 29	Merchandise	1.65		559.72
May 2	Merchandise	1.10		560.82
May 13	Merchandise	25.75		586.57
May 15	Merchandise	4.69		591.26
May 24	Merchandise	11.00		602.26
	Merchandise (5/5/50)	4.56		606.82
[fol. 63]				
June 8	Credit wool (152#)		70.00	536.82
	Merchandise	25.75		562.57
	Paid M. O. 6860		40.00	552.57
June 22	Merchandise	5.50		528.07
June 27	Paid		40.00	488.07
June 28	Merchandise	7.90		
		.70		496.67
July 5	Paid		40.00	456.67
Ju	Merchandise	22.00		478.67
July 13	Flour	5.00		483.67
July 17	Merchandise	5.50		489.17
July 29	Merchandise	16.50		505.67
July 31	Merchandise	8.75		514.42
August 3	Merchandise	3.30		517.72
	Paid cash & sheep		151.50	366.22
Oct. 14	Credit cash		5.00	361.22
1952				
Oct. 23	Received on account		280.00	81.22

Dated this 15th day of April, 1953.

McQuatters & Stevenson, By /s/ Wm. W. Stevenson,
Attorneys for Plaintiff.

STATE OF ARIZONA,
County of Coconino.—ss.

Hugh Lee, being first duly sworn, says that he is the plaintiff in the above entitled action and that the foregoing is a correct account of the plaintiff's claim on which action

[fol. 64] is brought, and that he verily believes it to be true.

/s/ Hugh Lee

Subscribed and sworn to before me this *21st* day of April, 1953.

/s/ Margaret M. Scott, Notary Public.

Seal

My Commission Expires:
December 18, 1956

Copy of the foregoing Bill of Particulars was mailed to W. E. Ferguson, attorney for defendants, at Holbrook, Arizona, in a sealed envelope, postage prepaid, this 22nd day of April, 1953.

McQuatters & Stevenson, By /s/ Wm. W. Stevenson, Attorneys for plaintiff.

[fol. 65]

IN SUPERIOR COURT OF APACHE COUNTY

OPINION AND ORDER—December 3, 1954

The Plaintiff, a non-Indian resident of Ganado, Apache County, Arizona, a licensed trader on the Navajo Reservation, instituted this action against the Defendants, Navajo Indians, residing on said Indian Reesrvation, (sic) for the value of goods, wares and merchandise sold and delivered to the Defendants. The Sheriff of Apache County served the summons and complaint on the Defendants and by virtue of a writ of attachment took into possession certain sheep belonging to said defendants.

The Defendants have filed a motion to dismiss this action on the grounds that the Court does not have jurisdiction of the persons or property of the Defendants for the following reasons:

1. Indian tribes are "subjects" of Federal law to the exclusion of State law and entitled to exercise their own inherent rights of self-government so far as they are in accord with Federal law;

2. That Indian tribes are under the exclusive jurisdiction of the Federal Government and therefore not subject to the laws of the states.

From the very beginning of our National existence we have been faced with the problems of our relations with Indian tribes who inhabited this continent when we came here. We invaded their territory, and took lands at a [fol. 66] great cost of war and blood-shed. Treaties ensued between our Government and these sovereign Indian nations to promote and establish peace. Sovereign rights of these people were acknowledged within boundaries known as reservations. They then owed no allegiance to or received protection from the respective states and territories wherein they resided. They were dependent upon the Government of the United States for their daily food and political rights, in accordance with the terms and provisions of the respective treaties between each of said Indian tribes and the United States. This was the condition of affairs at the time the leading case cited by the Defendants of Worcester vs. Georgia was decided in 1832.

The real question presented for decision is: Does the Navajo tribe, by virtue of its original tribal sovereignty, have exclusive jurisdiction within the Reservation over its members and their property in accordance with the terms and provisions of the treaties between the United States and the Navajo Tribe? It is generally conceded that the United States under such treaties and its practice of dealing with Indian tribes does have the power by Congressional enactment to govern the Navajo Indians in accordance therewith. What then, has been done by Congress and the Government, if anything, to change the original status that existed when the United States entered into these treaties with the Navajo Tribe as a sovereign power within the boundaries of its Reservation? There are numerous [fol. 67] statutes enacted by Congress relating to this subject, but the primary act which to my mind completely destroys the conception of two independent nations living together under and according to the terms of a treaty signed by them, is the granting by the United States to all Indians the great and extensive right of citizenship. Can it be said that after such an enactment Indians still

maintain their sovereign right to self-government with their primary allegiance to that government? Manifestly not. They were not required to go through the steps of naturalization and formally take the oath of allegiance as therein provided. This sweeping enactment bestowed upon them all of the rights of citizenship. Did not this enactment likewise require obligations of citizenship?

The State of Arizona has responded to this congressional enactment and through its Courts have determined:

1. That all Indian reservations in Arizona are within the political and governmental, as well as geographical, boundaries of the State and that the exception set forth in our Enabling Act applies to Indian lands considered as property, and not as a territorial area withdrawn from the sovereignty of the State of Arizona;

2. That Indians are qualified to serve as jurors, they are competent witnesses in judicial proceedings, may hold and operate a certificate of convenience and necessity as a common carrier, sue in their own right in the State Courts, [fol. 68] and that they are citizens and have the right to vote.

It seems to me that the decisions of our own Supreme Court are not fully and completely consistent in defining and establishing the status of the Indian tribes in Arizona. On the one hand the Court has extended to them all of the rights above enumerated as citizens of the United States and the State of Arizona. On the other hand the Supreme Court has upheld their inherent limited powers of self-government and generally speaking not subject to State law. To my mind these two conceptions of the status of Indians cannot be harmonized. No man can serve two masters, nor bear allegiance to two independent nations or communities. As citizens of Arizona they have the right and do participate in making the laws and it is axiomatic that those who make the laws must obey them in a democracy. I do not believe that the framers of our constitution of the United States and of the State of Arizona ever intended to grant suffrage to persons who were under no obligations to obey the laws enacted as a result of such grant. It is my opinion that Congress intended citizenship

of the United States to attach at the time the Indians become subject to the laws of the State or territory in which they reside. If that be true, then it must follow as the night the day that the Navajo Indians who have been declared to live within Arizona, as citizens of Arizona, are subject to the laws of Arizona. There is, of course, a [fol. 69] limitation to this sweeping statement: Lands upon which they reside are held in trust for them by the Government and those who deal with these people must do so under regulations of Congress and its duly appointed agents. This is done because in a sense they are minors and need some care and protection in their dealings. This does not mean that each transaction must be okayed by some high authority, but the granting of a license is a grant of authority to consummate transactions for which such license is granted. This relationship in a sense is a limited guardianship or tutorage relationship, whereby these Indians are being integrated into our political, social, and economic structure. We acknowledge their jurisdiction in tribal courts to school them in their rights of self-government and jurisprudence in order that they may more fully assume the duties of citizenship. The source of the power for these courts does not rest in its inherent natural powers retained from its original sovereignty, but rather permitted in this great democracy of ours for their schooling and for their education. It is my opinion that the grant of citizenship by the Government to the Navajo Indians and accepted by the State of Arizona has emancipated the Navajo Indians in all respects not expressly excluded by the Congress of the United States, such as the punishment of certain specific crimes and taxation.

To my mind the great weight of Arizona's decisions support the proposition that the Navajo Indians are citizens [fol. 70] of the United States and of the State of Arizona, and are subject to the laws of such State, except insofar as they are not in conflict with express reservations controlled by the Congress of the United States. Therefore, this Court does have jurisdiction of this case and the Plaintiff cannot be forced to try this matter before a tribal court, which does not have exclusive jurisdiction hereof.

It Is Hereby Ordered that the Motion to Dismiss Plaintiff's Complaint be, and the same is, hereby denied.

Dated at St. Johns, Arizona, this 3rd day of December, 1954.

/s/ J. Smith Gibbons, Judge of the Superior Court.

[fol. 71]

IN SUPERIOR COURT OF APACHE COUNTY

MOTION TO ASSOCIATE ATTORNEYS FOR DEFENDANTS —Filed June 13, 1955

Comes now W. E. Ferguson, Attorney for the defendants in the above entitled cause and moves the Court that Laurence Davis and Wilson, Compton and Wilson be associated with him as Attorneys for defendants in the above entitled cause.

/s/ W. E. Ferguson

The undersigned hereby consent that the said Laurence Davis and Wilson, Compton and Wilson be associated with W. E. Ferguson as Attorney for the defendants.

McQuatters & Stevenson, By /s/ Wm. H. Stevenson,
Flagstaff, Arizona, Attorneys for Plaintiffs.

[fol. 72]

IN SUPERIOR COURT OF APACHE COUNTY

AGREED STATEMENT OF FACTS AND STIPULATION—June 1, 1955

I

Come now the parties to the above entitled cause and stipulate to the following Agreed Statement of Facts:

1. All the allegations of the Amended Complaint of the Plaintiff herein are true except the allegation that there is now due and owing from the defendants to the plaintiff the sum of $361.22. Said figure was correct at the time of filing said Amended Complaint, but the defendants have subsequently paid the plaintiff $280.00 on account of said debt and consequently now owe the plaintiff the sum of $81.22 only. The Bill of Particulars filed herein, dated

April 15, 1953, is a true and correct statement of the account between plaintiff and defendants upon which this action is based.

2. The defendants are Navajo Indians, are duly enrolled members of the Navajo Tribe, and reside and have resided at all times concerned in this action on the Navajo Indian Reservation, to wit, at Steamboat Canyon near Ganado, Arizona.

3. The sales and deliveries of goods, wares, and merchandise recited in Paragraph II of the Amended Complaint herein, and the sales and payments described in the Bill of Particulars herein, occurred within the boundaries of the [fol. 73] Navajo Indian Reservation as defined in the act of Congress of June 14, 1934 (48 Stat. 960), on land that was at all times involved in this action a part of said Indian Reservation, and which was moreover at all times involved in this action within the exterior boundaries of Apache County as defined in section 17-102 A.C.A., (1939).

4. The summons in this case was served on the defendants and the property of the defendants seized under the Writ of Attachment herein was seized, by the Sheriff of Apache County, within the boundaries of the Navajo Indian Reservation, as above defined, on land of said Reservation, and within the boundaries of Apache County, as above defined.

5. The plaintiff is a non-Indian, and during the period in which he sold and delivered to the defendants the goods, wares and merchandise mentioned in Paragraph II of the Amended Complaint herein and made the sales and received the payments described in the Bill of Particulars herein was permitted by the Commissioner of Indian Affairs and the Secretary of the Interior of the United States of America to conduct the trading post and lunch counter at Ganado, Arizona, where the sale and delivery of such goods, wares, and merchandise took place and the payments on account thereof were made.

6. All facts recited in the Return of Sale of Personal Property filed herein on March 31, 1953, by John T. Crosby, [fol. 74] Sheriff of Apache County, are true; and the

Statement of Costs and Expenses Relating to Attachment and Order of Sale, attached thereto as Exhibit B, is true and correct, if this Court has jurisdiction of this case.

7. All parties to this action are and at all times involved herein have been citizens of the United States of America.

II

The plaintiff and the defendants hereby waive all right to present further evidence upon any issue presented by the plaintiff's Amended Complaint in this case and waive all further right to appear before the Superior Court of the State of Arizona in and for Apache County prior to entry of judgment on said Amended Complaint; provided, however, that it is stipulated and agreed that the defendants do not hereby concede the jurisdiction of said Court in this case, but expressly deny that the Court has or ever had jurisdiction over the persons of the defendants, over their property seized under writ of attachment herein, or over the subject matter of this action.

III

It is further stipulated and agreed that all further proceedings on the defendants' Counterclaim herein shall be deferred until after the Court has ruled on the Plaintiff's Motion to Dismiss heretofore filed on April 16, 1953.

[fol. 75] Dated this 1st day of June, 1955.

McQuatters & Stevenson, By Wm. W. Stevenson, 203 Talkington Building, Flagstaff, Arizona, Attorneys for Plaintiff.

By W. E. Ferguson, Holbrook, Arizona, Attorney for Defendants.

[fol. 76]

IN SUPERIOR COURT OF APACHE COUNTY

ORDER DISMISSING COUNTER-CLAIM—June 20, 1955

The Defendants having filed a counter-claim asking for affirmative relief, and the Plaintiff having filed a Motion

to dismiss said counter-claim, and the matter having been submitted to the Court for decision;

It Is Hereby Ordered that Plaintiff's Motion to Dismiss Counter-Claim be, and the same is, hereby granted and said Counter-Claim of the Defendants be, and the same is, hereby dismissed.

Dated at St. Johns, Arizona, this 20th day of June, 1955.

/s/ J. Smith Gibbons, Judge of the Superior Court.

[fol. 77]

IN SUPERIOR COURT OF APACHE COUNTY

ORDER FOR JUDGMENT—June 20, 1955

All legal questions presented by motions having been heretofore disposed of by orders of the Court, and the parties hereto having executed and filed herein Agreed Statement of Facts and Stipulation, thereby agreeing and stipulating that the Court could decide this matter on such statement of facts without further evidence, and the Court being advised in the premises;

It Is Hereby Ordered that the Plaintiff have judgment against the Defendants for the sum of Eighty Two and 22/100 Dollars ($82.22).

Dated at St. Johns, Arizona, this 20th day of June, 1955.

/s/ J. Smith Gibbons, Judge of the Superior Court.

[fol. 78]

IN SUPERIOR COURT OF APACHE COUNTY

NOTICE OF APPEAL—Filed August 17, 1955

Notice is hereby given that Paul Williams and Lorena Williams, the Defendants above named, hereby appeal to the Supreme Court of Arizona from the order dismissing Defendants' counter-claim entered in this action on June 20, 1955, and from the final judgment entered in this action on June 20, 1955.

We hereby certify that a copy of this Notice has been mailed to McQuatters and Stevenson, 203 Talkington Building, Flagstaff, Arizona, attorneys for the Plaintiff.

Dated this 17th day of August, 1955.

W. E. Ferguson, Holbrook, Arizona, Wilson, Compton and Wilson, Flagstaff, Arizona, Laurence Davis, Window Rock, Arizona, by /s/ Laurence Davis, Attorneys for the Defendants.

[fol. 79]

IN SUPERIOR COURT OF APACHE COUNTY

MINUTE ENTRIES

all located in Book 6, Superior Court Minutes

In Open Court February 2, 1953.

Honorable Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

Present Attorney M. V. Gibbons for the Plaintiff.

It Is Oredered (sic) that the Defendants appear and show cause on February 11, 1953, at 10 o'clock A. M., why the Court should not enter its order directing the sale of all the sheep and goats now held under a Writ of Attachment.

It Is Further Ordered that a copy of this order and petition be served upon the Defendants, or their attorney, at least five days before the hearing date.

In Open Court February 11, 1953.

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

Present the Plaintiff and his Attorneys M. V. Gibbons and Bill Stevenson of McQuatters and Stevenson; Attorney W. E. Ferguson, representing the Defendants.

Elmo Jarvis, Court Reporter was called in to report the proceedings.

Hugh Lee the Plaintiff was duly sworn and testified.

[fol. 80] The Plaintiff moved the Court for permission to amend their "Petition for Order of Sale of Sheep and Goats Now Held Under Attachment", to which the Defendants objected.

The Court: The Defendants' objection is overruled and the Plaintiff is granted permission to amend by inter-

lineation as follows: On page 1, line 15 after the word Arizona—has since the said 21st day of October, 1952, held the said property pursuant to said Writ of Attachment.

It Is Ordered that said Petition be, and the same is granted and the Sheriff is authorized to sell the property in the manner provided by law. The proceeds from the sale are to be deposited in the Clerk of the Superior Court's Office until further order of the Court.

It Is Further Ordered that a pre-trial conference be held in Holbrook, Arizona (for the convenience of counsel) on March 4, 1953.

In Chambers March 3, 1953

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

The Court: It Is Ordered that the 18 lambs be and they are hereby released from attachment, and the Sheriff of this County is authorized to return said property to the defendants.

The Court: Pursuant to stipulation of counsel,

It Is Ordered that the property which is subject to the Court Order of February 11, 1953, shall be sold by the [fol. 81] Sheriff in the manner provided by law, upon five successive days notice of sale.

In Open Court March 26, 1953

Hon. Judge J. Smith Gibbons presiding. Elmo Jarvis Deputy clerk present.

The Court: Based upon the Plaintiff's petition and stipulation of counsel, It Is Ordered, that the above specified orders of this Court be and the same are hereby modified in the manner hereinafter set forth and it is further ordered that the writs directing the sale and disposition of attached property heretofore issued out of this Court be quashed.

It Is Further Ordered that the attached property, described in the formal order and the increase thereof, to-wit, 18 lambs, or so much of said property together with

the increase as shall be necessary to satisfy the balance of plaintiff's claim, together with costs and probable costs, shall be sold by the Sheriff in the manner provided by law and in such manner as shall protect and preserve the increase, and that any property remaining be released to the defendants.

It Is Further Ordered that the Sheriff shall make return to this Court within 5 days from the date of such sale of what he has done pursuant to this order, and shall deposit with the Clerk of this Court the proceeds of such sale, pending final adjudication of the case.

[fol. 82] In Open Court November 16, 1953

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

Present William W. Stevenson, one of the plaintiff's attorneys; attorneys W. E. Ferguson and M. L. Crosse for the defendants.

Upon oral motion of W. E. Ferguson, It Is Ordered that Murray L. Crosse, Norman M. Littell, Charles M. Tansey, Jr. and Charles J. Alexander, be and they are hereby associated with W. E. Ferguson as counsel for the defendants.

In Open Court December 16, 1953

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

The Court: Due to the illness of Wm. Stevenson, It Is Ordered that the hearing in this matter be and the same is continued without date.

In Open Court March 1, 1954

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

Present Attorneys M. L. Cross, Charles M. Tansey, Jr., and W. E. Ferguson for the Defendant; Attorney Wm. M. Stevenson for the Plaintiff.

The Court: Based upon oral motion of W. E. Ferguson, It Is Ordered that Charles M. Tansey, Jr., is associated with counsel for the Defendant.

[fol. 83] The law matters were orally argued by both sides and It Is Ordered that the matter is taken under advisement.

In Chambers December 3, 1954

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

It Is Hereby Ordered that the Motion to Dismiss Plaintiff's complaint be, and the same is hereby denied, all in accordance with the written opinion and order signed and filed this day.

In Chambers May 9, 1955

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

It Is Ordered that the above entitled case is set for trial on Monday, June 13, 1955 at the hour of 10 A. M. and the clerk is directed to notify respective counsel.

In Chambers June 13, 1955

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

By stipulation of Counsel, It Is Ordered that Laurence Davis and Wilson, Compton and Wilson, be and they are hereby associated with W. E. Ferguson, as Attorney for the Defendants.

[fol. 84] In Chambers June 20, 1955

Hon. Judge J. Smith Gibbons presiding. Present Merle W. Heap, Clerk.

It Is Hereby Ordered that Plaintiff's Motion to Dismiss Counter-Claim be, and the same is, hereby granted, and said Counter-Claim of the Defendants be, and the same is, hereby dismissed.

It Is Hereby Ordered that the Plaintiff have judgment against the Defendants for the sum of Eighty Two and 22/100 Dollars ($82.22).

Approved.....Judge

Attest /s/ Merle W. Heap, Clerk.

[fol. 85]

IN SUPERIOR COURT OF APACHE COUNTY

STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL—
Filed August 26, 1955

Defendants have not designated for inclusion in the record on appeal the complete record or all proceedings in the action.

The points which defendants will rely on are as follows:

1. That the Court had no jurisdiction over the persons of the defendants, because they are Navajo Indians and service of summons was made on the Navajo Indian Reservation.

2. That the Court had no jurisdiction over the subject matter of the action, because trading with Indians on the Navajo Indian Reservation is governed exclusively by Federal Laws and Federal Laws provide that debts of Indians arising out of such trade are unenforceal.

3. That the Court had no jurisdiction over the property seized under Writ of Attachment, for the reason that it was the property of Navajo Indians and was seized and levied upon on the Navajo Indian Reservation.

4. That the Court erred in dismissing defendants' Counter-Claim.

[fol. 86] Dated this 23rd day of August, 1955

W. E. Ferguson, Holbrook, Arizona; Laurence Davis, Window Rock, Arizona; Wilson, Compton & Wilson, By C. B. Wilson, Flagstaff, Arizona; Attorneys for Defendants and Appellants.

Received Copy August 24, 1955

McQuatters & Stevenson, By Hy C. McQuatters, Attorneys for Plaintiff.

[fol. 87]

IN SUPERIOR COURT OF APACHE COUNTY

DESIGNATION OF CONTENTS OF RECORD ON APPEAL—
Filed August 26, 1955

Notice Is Hereby Given, That Paul Williams and Lorena Williams, his wife, the defendants and appellants herein, deem the following portions of the record, proceedings and evidence necessary to present the questions involved on appeal to the Supreme Court:

1. Amended Complaint.
2. Bond on Attachment. (Filed October 20, 1952).
3. Writ of Attachment. (Filed October 23, 1952).
4. Motion to Dismiss Action Because of Lack of Jurisdiction. (Filed November 7, 1952).
5. Answer and Counter-Claim. (Filed November 7, 1952).
6. Answer to Counter-Claim. (Filed November 22, 1952).
7. Petition for Order of Sale of Sheep and Goats Now Held Under Attachment. (Filed February 2, 1953).
8. Order to Show Cause. (Filed February 2, 1953).
9. Response and Objections to Sale. (Filed February 11, 1953).
10. Transcript of Testimony of Hearing on Petition for Order of Sale of Sheep and Goats. (Dated February 11, 1953).

[fol. 88] 11. Supplemental Petition for Disposition of Attached Property. (Dated February, 1953).

12. Stipulation of Counsel Relating to Sale of Attached Property and to Hearing on Petition for Disposition of Attached Property. (Filed March 3, 1953).
13. Order of Disposition of Attached Property. (Filed March 3, 1953).

14. Order Relating to Sale of Attached Property. (Filed March 3, 1953).

15. Writ Directing Sale of Property. (Dated March 7, 1953). (Filed March 31, 1953).

16. Notice of Sale. (Filed March 31, 1953).

17. Petition for Modification of Orders Relating to Sale and Disposition of Attached Property. (Dated March 19, 1953).

18. Stipulation of Counsel Relating to Sale of Attached Property and Relating to the Hearing on Plaintiff's Petition for Modification of Orders Pertaining to Sale and Disposition on Attached Property. (Dated March 26, 1953).

19. Order of Sale and Disposition of Attached Property. (Filed March 26, 1953).

20. Writ Directing Sale and Disposition of Attached Property. (Dated March 26, 1953). (Filed March 31, 1953).

21. Return of Sale of Personal Property. (Filed March 31, 1953).

22. Motion to Dismiss Counterclaim. (Filed April 16, 1953).

23. Motion for More Definite Statement. (Filed April 16, 1953).

[fol. 89] 24. Bill of Particulars. (Filed April 23, 1953).

25. Opinion and Order. (Dated December 3, 1954).

26. Motion to Associate Attorneys for Defendants. (Filed June 13, 1955).

27. Agreed Statement of Facts and Stipulation. (Filed June 13, 1955).

28. Order Dismissing Counter-Claim. (Filed June 20, 1955).

29. Order for Judgment. (Filed June 20, 1955).

30. Notice of Appeal. (Filed August 17, 1955).

31. Receipt of Clerk for Cash Bond. (Dated August 17, 1955).

32. All Minute Entries and Orders Made in Said Cause.

33. All Minute Entries and Orders Made Subsequent to the Filing of this Notice pertaining to the Record on Appeal.

34. Statement of Points to be Relied Upon On Appeal.

35. This Notice.

36. Affidavit on Attachment.

Dated this 23rd day of August, 1955.

W. E. Ferguson, Holbrook, Arizona; Laurence Davis, Window Rock, Arizona; Wilson, Compton & Wilson, By C. B. Wilson, Flagstaff, Arizona; Attorneys for Defendants and Appellants.

[fol. 90] Received Copy August 24, 1955

McQuatters & Stevenson, By Hy C. McQuatters, Attorneys for Plaintiff.

[fol. 91]

MERLE W. HEAP
Clerk of Superior Court
Apache County
St. Johns, Arizona

September 27, 1955

Miss Eugenia Davis, Clerk
Arizona Supreme Court
Capitol Building
Phoenix, Arizona

Re: Civil No. 2913
Lee vs. Williams
(Apache County)

Dear Miss Davis:

We have received and filed your letter acknowledging receipt of the above numbered Civil file.

The record on appeal followed the Defendants Designation Of Contents Of Record On Appeal, except in the following numbers:

1. Designation No. 10, a transcript was never filed.
2. Designation No. 31, our office copy was retained for the Auditors and a statement by the Clerk was sent in it's place. No formal bond filed.
3. Designation No. 33, all minute enteries were included in No. 32.
4. Designation No. 36, affidavit was never filed.

With kindest regards, I remain,

Very truly yours,

/s/ MERLE W. HEAP
Merle W. Heap
Clerk Superior Court

[fol. 92] (The above letter is reproduced here in lieu and in explanation of the absence of appellants' designations numbered 31, 33, and 36. See "Designation of Contents of Record on Appeal," above.)

[fol. 93] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

No. 6172

PAUL WILLIAMS and LORENA WILLIAMS, husband and wife, Appellants,

v.

HUGH LEE, doing business as GANADO TRADING POST, Appellee.

Appeal from Superior Court of Apache County
Honorable J. Smith Gibbons, Judge

Judgment Affirmed in Part and Reversed in Part.

W. E. Ferguson, of Holbrook; Wilson, Compton & Wilson, of Flagstaff; Laurence Davis, of Phoenix, Attorneys for Appellants; and Murray L. Crosse, Field Solicitor, Department of the Interior, Gallup, N. M., of Counsel.

McQuatters & Stevenson, of Flagstaff, Attorneys for Appellee.

OPINION—Filed January 7, 1958

WINDES, Justice.

Suit in the superior court of Apache county by Hugh Lee dba Ganado Trading Post against Paul Williams and his wife, Lorena. Plaintiff was operating the Ganado Trading Post on the Navajo Indian reservation under authority given by the Secretary of Interior and Commissioner of Indian Affairs. Defendants are Indians, members of the Navajo tribe and residing on the reservation. Plaintiff operating as such trader sold articles to defendants on credit. There being a balance unpaid, this suit was filed. Service of summons was made upon defendants within the boundaries of the Navajo Indian reservation. At the time of commencing the action writ of attachment was procured [fol. 94] and levied upon sheep owned by the defendants. The levy was made upon the reservation.

Defendants moved to dismiss the action upon the ground that the court lacked jurisdiction and filed a counterclaim for wrongful attachment. Judgment was rendered for the plaintiff on his complaint and the counterclaim was dismissed. Defendants bring the matter before us claiming the trial court had no jurisdiction over their persons for the reason that a state officer cannot legally serve process upon a Navajo Indian within the boundaries of the reservation and that the superior court has no jurisdiction over the subject matter in that it has no power to enforce debts contracted on the reservation by tribal Indians in the course of dealing with a federally licensed Indian trader. There was no assignment of error nor argument questioning the correctness of the court's dismissal of the counterclaim; consequently there will be no further reference thereto.

The defendants were and are citizens of the United States, 8 U.S.C.A., section 1401, and were and are residents of the state of Arizona. Porter v. Hall, 34 Ariz. 308, 271 P. 411, overruled only as to right of suffrage in Harrison v. Laveen, 67 Ariz. 337, 196 P. 2d 456. In the Hall case this court said:

"We have no hesitancy in holding, therefore, that all Indian reservations in Arizona are within the political and governmental, as well as geographical boundaries of the state, and that the exception set forth in our Enabling Act applies to the Indian lands considered as property, and not as a territorial area withdrawn from the sovereignty of the state of Arizona. * * *"

Defendants contend that under the treaty with the Navajos of June 1, 1868, and federal statutes, 25 U.S.C.A. section 231, state agents may enter upon the reservation only for the purpose of inspection of health and educational conditions and enforcement of sanitation and quarantine regulations or to enforce compulsory school attendance laws. The contention is probably sound when the subject [fol. 95] matter involved is something that is of no concern to the state, something that is clearly within the exclusive jurisdiction of federal authorities. Unless permitted by the federal government, the state would be outside the sphere of its authority in attempting to interfere with the exclusive power of the federal government in administering the affairs of Indians and promoting their education and health. The state does have some degree of sovereignty over Indian reservations. Draper v. U. S., 164 U.S. 240, 17 S. Ct. 107, 41 L. Ed. 419. That case is authority for the proposition that in a case over which the state would have jurisdiction except for the fact that it occurred within the boundaries of an Indian reservation, it would have such jurisdiction after admission of the state to the Union except to the extent that sole and exclusive power over the reservation in the federal government is expressly reserved. Our view is that if the subject matter of the litigation is one that the state court has jurisdiction to try and determine and the federal government has not reserved sole and exclusive jurisdiction over the territory involved, the state officers may enter such territory under the state's sovereign authority and serve the necessary process to enable it to exercise its legitimate jurisdiction. Any other rule would lead to ridiculous results. For illustration, if defendants' reasoning be sound, a white man could murder another white man on or off an Indian reservation and would be

secure from Arizona prosecution so long as he could remain within the boundaries of a reservation. A civil dispute between two white traders on a reservation could not be tried for lack of service so long as the defendant remained on the reservation. In other words the state would have territorial jurisdiction without power to exercise it. Such is not and cannot be the law.

Appellant urges that Arizona courts have no jurisdiction to enforce payment against a Navajo Indian of a debt which arose out of his dealing with a federally licensed trader on [fol. 96] the reservation. It is not contended that the federal courts have such jurisdiction but, in defendants' motion to dismiss, it is contended that jurisdiction belongs on the reservation in the tribal court and no other. It is argued that the United States has exclusive jurisdiction over civil actions involving Indians except to the extent that Congress has conferred jurisdiction upon the state courts. This is not completely correct. The correct rule concerning the extent of state jurisdiction over Indian reservations is stated in U. S. v. McGowan et al, 302 U.S. 535, 58 S. Ct. 286, 82 L. Ed. 410, as follows:

> "Enactments of the federal government passed to protect and guard its Indian wards only affect the operation, within the colony (reservation), of such state laws as conflict with the federal enactments."

We do not question the authority of the federal government over tribal Indians and its right to deprive the state courts of jurisdiction to try and determine litigation of the nature herein involved, but we think the correct statement of the rule is that enunciated by Prof. Ray A. Brown, an eminent authority on Indian law, in his article, The Indian Problem and the Law, 39 Yale Law Journal, pages 314-315. The rule is stated in the following language:

> "While the theory of tribal allegiance and federal guardianship has served in criminal matters to place the Indian in a special category, such has not generally been the result in matters of civil rights. The Indian, whether tribal and a ward of the government or not, may, *except where specially restricted by act of Con-*

gress, make contracts, acquire and dispose of property, and sue and be sued in the state or federal courts." (Emphasis ours.)

To the same effect, 43 C.J.S., Indians, section 8(b):

"• • • an Indian may be sued in the state courts in any matter over which the United States has not expressly retained jurisdiction. Where not prohibited by statute, Indians may be sued on contracts or in tort."

Many courts have recognized the right of state courts to assume jurisdiction over disputes between Indians and whites. Swartzel et al. v. Rogers, 3 Kan. 374, was a suit [fol. 97] between Shawnee Indians to partition land located on the reservation. After declaring there was nothing to show the property was restricted, the court said:

"The fact that the contestants are Shawnee Indians, did not deprive the district court nor does it forbid to this court the exercise of jurisdiction either as to parties or subject matter. That the property belongs to Indians is not sufficient to place it beyond the jurisdiction of the state courts; and if the subject matter be within their jurisdiction, the parties, whether Indians or white men, have the right to litigate about it therein."

That case was cited as authority by the United States Supreme Court in the case of Felix v. Patrick, 145 U.S. 317, 12 S. Ct. 862, 36 L. Ed. 719. Stacy v. LaBelle, 99 Wis. 520, 75 N.W. 60, was a suit in the state court against an Indian for a balance due on account for goods, wares and merchandise sold to the Indian by the plaintiff who was an Indian trader on the reservation operating under and by virtue of a license issued by the United States. It was held that the state court had jurisdiction. Red Hawk v. Joines, 129 Ore. 620, 278 P. 572, was an action brought by an Indian who was an allottee without final patent on the Umatilla Indian reservation against a white man to replevy cattle taken from the Indian's possession. State jurisdic-

tion was sustained with a very thorough discussion of the problem of jurisdiction over the Indian, his personal property and over the reservation. Bonnett v. Seekins, 126 Mont. 24, 243 P. 2d 317, was a case where the Indian brought suit against a white to recover rent due under a lease of land held under an allotment. The lease had been approved by the Indian agency. It was held the state court had jurisdiction. To the same effect is Stevenson v. Christie, 64 Ark. 72, 42 S.W. 418, which was a suit by a white man against an Indian on a contract made in Indian territory as the result of the operation by the white man of a mercantile business in the Indian territory.

There are cases such as is before this court that were tried in the state courts wherein jurisdiction was apparently conceded or at least not presented. Tinker v. Midland Valley [fol. 98] Mercantile Co., 25 Okla. 160, 105 P. 333. This was a suit by an Indian trader against an Indian on a promissory note which defendant contended was void because it was for credit given in excess of that authorized by statute. The case was reviewed by the United States Supreme Court and reversed but not on jurisdictional grounds. Tinker v. Midland Valley Mercantile Company, 231 U.S. 681, 34 S. Ct. 252, 58 L. Ed. 434.

We are cited to a regulation of the Commissioner of Indian Affairs to the effect that a trader may extend credit to Indians but that such credit will be at the trader's own risk. The argument is advanced that this renders the debt unenforceable in the state court and ousts all courts of jurisdiction to hear the matter. Whether this regulation renders the debt unenforceable is not before us except to the extent that such enforcement may deprive the court of jurisdiction for the reason that the assignment of error in this matter presents only the jurisdictional question. We are clearly of the opinion that the regulation has nothing to do with the power of any court to determine a dispute concerning its application. If in fact the effect is to render the debt unenforceable, it is a proper defense on the merits but does not deprive the court of power to hear the matter.

When the action was commenced a writ of attachment was issued directing the sheriff to attach sheep belonging to defendants and located upon the reservation. The levy

was made. Before final disposition of the case plaintiff moved for authority to sell the property and impound the proceeds. In response to this motion defendants moved to quash the attachment and levy upon the ground, among others, that the court had no jurisdiction over the property proposed to be sold. The court ruled adversely to defendants and ordered the property sold. The stock was sold at public auction at the trading post of plaintiff. Costs of sale were $246.72. The final judgment was in the sum of $82.22. Defendants by express assignment contend the [fol. 99] court erred in permitting the sale and proceedings under the writ of attachment for the reason that the state court has no jurisdiction to interfere with property of tribal Indians within an Indian reservation.

We believe there can be no serious question that under the commerce clause of the United States constitution and under the right to protect the Indian and his property, the federal government may prescribe the conditions under which the tribal Indian may dispose of or others may acquire his property, while located on the reservation. If there be a federal statute or lawful regulation adopted pursuant to authority of federal statute prescribing restrictions for the buying or selling of an Indian's property on the reservation, a state court has no right nor power to enforce a state law concerning the disposition of such property which conflicts with the federal statute or regulation. U. S. v. McGowan et al, supra.

Pursuant to its power to supervise and control commerce, a federal license is required to trade upon the reservation. The federal statute provided that such trading shall be done only "under such rules and regulations as the Commissioner of Indian Affairs may prescribe for the protection of said Indians." 25 U.S.C.A., section 262. Among the regulations adopted is the following:

> "All trade with Indians shall be confined to the premises specified in the license, except the buying of livestock and livestock products, which shall be covered by special permits issued by the superintendent." 25 CFR 277.13.

We interpret this regulation as placing livestock in a special category and prohibiting buying of such property from the Indian without special permits issued by the superintendent. We can think of no purpose for the regulation except to protect the Indian in the sale of his livestock by giving the superintendent supervision over the sales. To permit the state law to reach into an Indian reservation and require the sale of his livestock at public sale under execution [fol. 100] clashes with the provisions of the foregoing regulation and operates to deprive the superintendent of his power of supervision over sales of Indian property and takes from the Indian the protective cloak of such supervision. We fail to see how such execution sales of livestock may be effected without substituting the state law on execution sale for the reservation law as prescribed by the regulation defining the method of selling Indian livestock. We think such substitution cannot be made and the state law cannot operate under such conditions. The attachment should have been quashed for lack of jurisdiction of the state court to force the sale thereunder.

Plaintiff advances the theory that because the Indians are citizens they must be treated as having been emancipated from government supervision. It is argued that since they enjoy the privileges of citizenship, they must bear the burdens the same as other citizens. The correct rule is that the mere fact Indians have become citizens does not deprive the federal government of the right and power to pass laws and authorize regulations for the protection of Indians as a tribal people. Hallowell v. U. S., 221 U.S. 317, 31 S. Ct. 587, 55 L. Ed. 750; U. S. v. Waller, 243 U.S. 452, 37 S. Ct. 430, 61 L. Ed. 843 (cited with approval in Begay v. Miller, 70 Ariz. 380, 222 P. 2d 624).

Judgment is reversed as to the levy and sale under attachment and otherwise affirmed.

Dudley W. Windes, Justice, Fred C. Struckmeyer, Jr., Justice, J. Mercer Johnson, Justice.

Concurring:

Levi S. Udall, Chief Justice, M. T. Phelps, Justice.

[fol. 101]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

No. 6172

PAUL WILLIAMS AND LORENA WILLIAMS, Appellants,

v.

HUGH LEE DBA GANADO TRADING POST, Appellee.

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
November 4, 1957

This case coming on for hearing today was argued for the appellants by Mr. Laurence Davis, and Mr. Murray L. Grosse was associated with attorney for appellants. Mr. William W. Stevenson argued for the appellee. Appellee was granted five days to reply to memo of authorities filed by appellant. The case was Ordered Submitted.

MINUTE ENTRY OF JUDGMENT—January 7, 1958

This case having been heretofore submitted, and the Court having duly considered same and being now advised in the premises, files its opinion. It is accordingly Ordered that the judgment of the trial court be affirmed in part and reversed in part: Judgment reversed as to levy and sale under attachment, and otherwise affirmed. Costs in this court to appellants.

Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 102]

IN SUPREME COURT OF ARIZONA

ORDER DISALLOWING COSTS—February 11, 1958

On February 11th, 1958, the Court entered the following Order in this case:

> Appellant having filed a Statement of Costs, and Appellee having made objections thereto, the matter was considered. It appears that we inadvertently neglected to state in the decision rendered that each party was to bear their own costs, and it is therefore ordered that no costs be allowed appellant.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 103]

SUPREME COURT OF THE UNITED STATES

No. 811—October Term, 1957

[Title omitted]

ORDER ALLOWING CERTIORARI—April 14, 1958

The petition herein for a writ of certiorari to the Supreme Court of the State of Arizona is granted. The Solicitor General is invited to file a brief setting forth the views of the United States.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.